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10/580,379	02/13/2007	Raymond John Bacon	508-051.009	2557

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EXAMINER

SHEARER, DANIEL R

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/580,379	Applicant(s) BACON, RAYMOND JOHN	
	Examiner DANIEL R. SHEARER	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 May 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/22/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “insert formed as a part of a component of the valve” as discussed in claim 12 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the

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description: 224 in Fig. 4. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claims 15 and 16 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 15 and 16 contain no limitations not found in claim 1 and further are merely a rearrangement of the preamble.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 5 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 5 recites the limitation "the valve end" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

7. Claim 12 recites the limitation "the valve" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

8. Claim 12 recites the limitation "wherein the insert is parallel" and it is unclear if the sides of the insert are parallel to each other or if the insert is parallel to another object. For the purposes of examination, it is assumed that the claim intends the insert to include parallel sides.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1, 2, 6-9, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,001,524 to Maison et al. (Maison).

Maison shows a reservoir (10) for a source of a gaseous, gas borne or droplet substance (Col. 8, ll. 8-20) to be used in a dispenser (Fig. 2), comprising a minor portion (portion of 10 directly below bead 36 in Fig. 4) and a major portion (wider portion of 1

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occupied by substance in Fig. 2) with the minor portion having a smaller relative cross section (Fig. 2) and the reservoir being transparent (Col. 7, ll. 75, Col. 8, ll. 1-2) so that a user can note the quantity of substance remaining in the reservoir.

Regarding claim 2, Maison shows the minor portion having a constant cross section (Fig. 4).

Regarding claim 6-8, Maison shows that the reservoir is a glass reservoir enclosed in an insert molded plastics material sheath (Col. 8, ll. 2-6).

Regarding claim 9, Maison shows that the reservoir is of transparent/translucent plastics material (Col. 7, ll. 75, Col. 8, ll. 1-5).

Regarding claim 11, Maison shows the reservoir (10) including an insert (22) that substantially reduces the cross section of the reservoir (Fig. 2).

Regarding claim 12, Maison shows that the insert is formed as part of a component of the valve (Fig. 2, 11) in the source for metering a dose from its reservoir (Col. 1, ll. 12-15).

11. Claims 1, 5-8, 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,878,917 to Reinhard et al. (Reinhard).

Reinhard shows a glass reservoir (Col. 4, ll. 53-55) for a source of a gaseous, gas borne or droplet substance (Col. 1, ll. 6-10) to be used in a dispenser (Fig. 2), comprising a minor portion (tapering portion of 1 directly below valve 2 in Fig. 2) and a major portion (portion of 1 adjacent lower half shell 6 in Fig. 2) with the minor portion having a smaller relative cross section (Fig. 2) and the reservoir being transparent (Col. 2, ll. 33-46) so that a user can note the quantity of substance remaining in the reservoir.

Regarding claim 5, Reinhard shows the minor portion with a diminishing cross section (Fig. 2) and provided at the valve end (2) of the reservoir.

Regarding claims 7 and 8, Reinhard shows the glass reservoir enclosed in an insert molding plastics material sheath (Col. 3, ll. 23-39).

12. Claims 1, 3, 4, 9, 11, 13, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,086,765 to Levine.

Levine shows a reservoir to be used in a dispenser, comprising a minor portion (92) and a major (86) portion with the minor portion having a smaller relative cross section (Fig. 2) and the reservoir being a transparent plastic material (Col. 4, ll. 11-12) so that a user can note the quantity of substance remaining in the reservoir.

Regarding claim 3, Levine shows the minor portion having a progressively diminishing cross section (Fig. 2).

Regarding claim 4, Levine shows that the minor portion is the opposite end of the source from its release valve (58) so that a user can observe the substance level with the dispenser oriented valve up (as shown in Figs. 1-3).

Regarding claim 11, Levine shows the reservoir having an insert (102) that substantially reduces the cross section of the reservoir (Fig. 2).

Regarding claim 13, Levine shows that the insert is parallel (surfaces 108 and 110 are parallel as shown in Fig. 2).

Regarding claim 14, Levine shows that the insert is tapered (Fig. 2).

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Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

15. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maison in view of U.S. Patent No. 3,506,004 to Mann et al. (Mann).

Maison shows all aspects of the applicant's invention as set forth in claim 9, but fails to disclose the reservoir enclosed by a robust, impermeable outer enclosure. However, Mann shows a reservoir (20) enclosed in a robust, impermeable enclosure (21) to keep the reservoir free from dust and other contaminants (Col. 3, ll. 20-24). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the reservoir of Maison with the enclosure of Mann to keep the reservoir isolated from dust and other contaminants.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 3,184,115 to Meshberg shows a reservoir with a minor and major portion with the minor portion having a smaller cross section than the major portion.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL R. SHEARER whose telephone number is (571)270-7416. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571)272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. R. S./
Examiner, Art Unit 3754

/Kevin P. Shaver/
Supervisory Patent Examiner, Art
Unit 3754